

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1112**

**Introduced by Assembly Member Blakeslee**

February 27, 2009

An act to ~~amend Section 25143 of~~ *add Section 25144.1* to the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1112, as amended, Blakeslee. Hazardous waste: management.

Existing law authorizes the Department of Toxic Substances Control to grant a variance from the requirements regulating the management of hazardous waste, if the department makes specified findings. *Existing law also requires the department to classify as nonhazardous waste any fly ash, bottom ash, and flue gas emission control residues generated from a biomass combustion process, as specified.*

*This bill would require the department, to the extent it does not violate federal law, to classify as nonhazardous waste petroleum contact water and petroleum tank bottoms and sludge, as defined.*

~~This bill would make technical, nonsubstantive changes to that law.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. Section 25144.1 is added to the Health and Safety*
- 2 *Code, to read:*
- 3 *25144.1. (a) Notwithstanding any other provision of law and*
- 4 *to the extent that it does not violate federal law, the department*

1 *shall classify petroleum contact water and petroleum tank bottoms*  
2 *and sludge as nonhazardous waste.*

3 *(b) For purposes of this section, the following definitions apply:*

4 *(1) "Petroleum contact water" means water containing a*  
5 *petroleum product, including, but not limited to any of the*  
6 *following:*

7 *(A) Condensate from underground and aboveground petroleum*  
8 *tanks.*

9 *(B) Water bottoms or drawdown water removed from a*  
10 *petroleum storage tank system.*

11 *(C) Petroleum tank filler sump and dispenser sump water.*

12 *(D) Recovered product or water in contact with product, which*  
13 *does not contain hazardous constituents other than petroleum,*  
14 *from first response actions to petroleum spills or from petroleum*  
15 *contamination site cleanups.*

16 *(E) Aboveground petroleum tank seal leakage water.*

17 *(F) Pumpable liquids from petroleum tank cleaning operations.*

18 *(2) "Petroleum tank bottoms and sludge" means petroleum*  
19 *product, water, and solids contained in the bottom of a storage*  
20 *tank of state certified fuel, including the petroleum residue that*  
21 *remains at the bottom of the tank after all liquids have been*  
22 *removed.*

23 ~~SECTION 1. Section 25143 of the Health and Safety Code is~~  
24 ~~amended to read:~~

25 ~~25143. (a) The department may grant a variance from one or~~  
26 ~~more of the requirements of this chapter, or the regulations adopted~~  
27 ~~pursuant to this chapter, for the management of a hazardous waste~~  
28 ~~if all of the following conditions apply:~~

29 ~~(1) One of the following conditions applies:~~

30 ~~(A) The hazardous waste is solely a non-RCRA hazardous waste~~  
31 ~~or the hazardous waste or its management is exempt from, or is~~  
32 ~~not otherwise regulated pursuant to, the federal act.~~

33 ~~(B) The requirement from which a variance is being granted is~~  
34 ~~not a requirement of the federal act, or the regulations adopted to~~  
35 ~~implement the federal act.~~

36 ~~(C) The department has issued, or is simultaneously issuing, a~~  
37 ~~variance from the federal act for the hazardous waste management~~  
38 ~~pursuant to subdivision (c).~~

39 ~~(2) The department makes one of the following findings:~~

1     ~~(A) The hazardous waste, the amount of the hazardous waste,~~  
2     ~~or the hazardous waste management activity or management unit~~  
3     ~~is insignificant or unimportant as a potential hazard to human~~  
4     ~~health and safety or to the environment, when managed in~~  
5     ~~accordance with the conditions, limitations, and other requirements~~  
6     ~~specified in the variance.~~

7     ~~(B) The requirements, from which a variance is being granted,~~  
8     ~~are insignificant or unimportant in preventing or minimizing a~~  
9     ~~potential hazard to human health and safety or the environment.~~

10    ~~(C) The handling, processing, or disposal of the hazardous waste,~~  
11    ~~or the hazardous waste management activity, is regulated by~~  
12    ~~another governmental agency in a manner that ensures it will not~~  
13    ~~pose a substantial present or potential hazard to human health and~~  
14    ~~safety, and the environment.~~

15    ~~(D) A requirement imposed by another public agency provides~~  
16    ~~protection of human health and safety or the environment~~  
17    ~~equivalent to the protection provided by the requirement from~~  
18    ~~which the variance is being granted.~~

19    ~~(3) The variance is granted in accordance with this section.~~

20    ~~(b) (1) The department may grant a variance upon receipt of a~~  
21    ~~variance application for a site or sites owned or operated by an~~  
22    ~~individual or business concern. The individual or business concern~~  
23    ~~submitting the application for a variance shall submit to the~~  
24    ~~department sufficient information to enable the department to~~  
25    ~~determine if all of the conditions required by subdivision (a) are~~  
26    ~~satisfied for all situations within the scope of the requested~~  
27    ~~variance.~~

28    ~~(2) The department may also grant a variance, on its own~~  
29    ~~initiative, to one or more individuals or business concerns. If the~~  
30    ~~variance is granted to more than one individual or business concern,~~  
31    ~~the department, in granting the variance pursuant to this paragraph,~~  
32    ~~shall comply with all of the following requirements:~~

33    ~~(A) The department shall make all of the following findings, in~~  
34    ~~addition to the findings required pursuant to paragraph (2) of~~  
35    ~~subdivision (a):~~

36    ~~(i) That the variance is necessary to address a temporary~~  
37    ~~situation, or that the variance is needed to address an ongoing~~  
38    ~~situation pending the adoption of regulations by the department.~~

39    ~~(ii) That the variance will not create a substantive competitive~~  
40    ~~disadvantage for a member or members of a specific class of~~

1 facilities. This finding shall be based upon information available  
2 to the department at the time that the variance is granted.

3 (iii) That there are no reasonably foreseeable site-specific  
4 physical or operating conditions that could potentially impact the  
5 finding made by the department pursuant to paragraph (2) of  
6 subdivision (a). This finding shall be supported by substantial  
7 evidence in the record as a whole, and shall be based upon both  
8 of the following:

9 (I) The types of hazardous waste streams, the estimated amounts  
10 of hazardous waste, and the locations that are affected by the  
11 variance. The estimate of the amounts of hazardous waste that are  
12 affected by the variance shall be based upon information reasonably  
13 available to the department.

14 (II) Due inquiry, with respect to the hazardous waste streams  
15 and management activities affected by the variance, regarding the  
16 potential for mismanagement, enforcement and site remediation  
17 experience, and proximity to sensitive receptors.

18 (B) The variance shall not be granted for a period of more than  
19 one year. A variance granted pursuant to this paragraph may be  
20 renewed for one additional one-year period, if the department  
21 makes a finding that the variance has not resulted in harm to human  
22 health or safety or to the environment and that there has been  
23 substantial compliance with the conditions contained in the  
24 variance.

25 (C) The department shall issue a public notice at least 30 days  
26 prior to granting the variance to allow an opportunity for public  
27 comment. The public notice shall be issued in the California  
28 Regulatory Notice Register, to the department's regulatory mailing  
29 list, and to all potentially affected hazardous waste facilities and  
30 generators known to the department. The department shall, upon  
31 request, hold a public meeting prior to granting the variance. In  
32 granting the variance and in making the findings required by  
33 paragraph (2) of subdivision (a) and subparagraph (A), the  
34 department shall consider all public comments received.

35 (D) The department shall not grant a variance pursuant to this  
36 paragraph from the definition of, or classification as, a hazardous  
37 waste, or from requirements pertaining to the investigation or  
38 remediation of releases of hazardous waste or constituents.

39 (E) The authority of the department to grant or renew variances  
40 pursuant to this paragraph shall remain in effect only until January

1 ~~1, 2002, unless a later enacted statute, which is enacted before~~  
2 ~~January 1, 2002, deletes or extends that date. This subparagraph~~  
3 ~~shall not be construed to invalidate any variance granted pursuant~~  
4 ~~to this paragraph prior to the expiration of the department's~~  
5 ~~authority.~~

6 ~~(e) (1) In addition to the variance authorized pursuant to~~  
7 ~~subdivisions (a) and (b), the department, after making one of the~~  
8 ~~findings specified in paragraph (2) of subdivision (a), may also~~  
9 ~~grant a variance from the requirements of the federal act in~~  
10 ~~accordance with Sections 260.30, 260.31, 260.32, and 260.33 of~~  
11 ~~Title 40 of the Code of Federal Regulations, or successor federal~~  
12 ~~regulations, regarding the issuance of variances from classification~~  
13 ~~of a material as a solid waste or variances classifying enclosed~~  
14 ~~devices using controlled flame combustion as boilers.~~

15 ~~(2) This subdivision shall take effect on the date that the~~  
16 ~~department obtains authorization from the Environmental~~  
17 ~~Protection Agency to implement those provisions of the federal~~  
18 ~~act that are identified in paragraph (1).~~

19 ~~(d) Each variance issued pursuant to this section shall be issued~~  
20 ~~on a form prescribed by the department and shall, as applicable,~~  
21 ~~include, but not be limited to, all of the following:~~

22 ~~(1) Information identifying the individuals or business concerns~~  
23 ~~to which the variance applies. This identification shall be by name,~~  
24 ~~location of the site or sites, type of hazardous waste generated or~~  
25 ~~managed, or type of hazardous waste management activity, as~~  
26 ~~applicable.~~

27 ~~(2) As applicable, a description of the physical characteristics~~  
28 ~~and chemical composition of the hazardous waste or the~~  
29 ~~specifications of the hazardous waste management activity or unit~~  
30 ~~to which the variance applies.~~

31 ~~(3) The time period during which the variance is effective.~~

32 ~~(4) A specification of the requirements of this chapter or the~~  
33 ~~regulations adopted pursuant to this chapter from which the~~  
34 ~~variance is granted.~~

35 ~~(5) A specification of the conditions, limitations, or other~~  
36 ~~requirements to which the variance is subject.~~

37 ~~(e) (1) Variances issued pursuant to this section are subject to~~  
38 ~~review at the discretion of the department and may be revoked or~~  
39 ~~modified at any time.~~

1     ~~(2) The department shall revoke or modify a variance if the~~  
2     ~~department finds any of the following:~~

3     ~~(A) The conditions required by this section are no longer~~  
4     ~~satisfied.~~

5     ~~(B) The holder of the variance is in violation of one or more of~~  
6     ~~the conditions, limitations, or other requirements of the variance,~~  
7     ~~and, as a result of the violation, the conditions required by this~~  
8     ~~section are no longer satisfied.~~

9     ~~(C) If the variance was granted because of the finding specified~~  
10    ~~in subparagraph (C) or (D) of paragraph (2) of subdivision (a), the~~  
11    ~~holder of the variance is in violation of one or more of the~~  
12    ~~regulatory requirements of another governmental agency to which~~  
13    ~~the holder is subject and the violation invalidates that finding.~~

14    ~~(f) Within 30 days from the date of granting a variance, the~~  
15    ~~department shall issue a public notice on the California Regulatory~~  
16    ~~Notice Register.~~